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E.O. 12958: DECL: 07/25/2019

TAGS: KACT MARR PARM PREL RS US START

SUBJECT: START FOLLOW-ON NEGOTIATIONS, GENEVA  
(SFO-GVA-III): (U) START FOLLOW-ON NEGOTIATIONS, JULY 24, 2009, LAWYERS' MEETING ON FINAL PROVISIONS AND PREAMBLE

REF: GENEVA XXXXX (SFO-GVA-III-003)

Classified By: A/S Rose E. Gottemoeller, United States  
START Negotiator. Reasons: 1.4(b) and (d).

11. (U) This is SFO-GVA-III-004.

12. (U) Meeting Date: July 24, 2009  
Time: 11:00 A.M. - 12:30 P.M.  
Place: U.S. Mission, Geneva  
Participantts:

U.S. Russia

Mr. brown Ms. Kotkova

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SUMMARY  
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13. (S) U.S. (Brown) and Russian (Kotkova) lawyers met to discuss Russian-proposed texts for the final provisions and preamble (REFTEL). Brown sought clarification of differences between those texts and the Russian "vision" paper of June 1, 2009, as well as between those texts and the START Treaty. For the final provisions, Kotkova explained that her intent had been to simplify the texts and, therefore, she had removed provisions that, while not legally objectionable, were redundant or otherwise unnecessary. Brown noted that some of the deleted texts had been used historically in arms control agreements and, therefore, their deletion might raise questions; in most cases Kotkova indicated that the full

START formulations could be used if necessary. For the preamble, Kotkova was able to provide background on the derivation of some of the provisions and promised to seek more information for those she was unclear about.

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FINAL PROVISIONS  
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¶4. (S) Brown noted that many of the paragraphs in the Russian-proposed text of the Final Provisions used abbreviated formulations compared to those in Articles XVI through XIX of the START Treaty. Kotkova explained that she had deliberately sought to simplify the texts but had not intended to change their meaning. For instance, in paragraph 1 of the Russian proposal, the words, "in accordance with the constitutional procedures of each Party" were deleted because, as far as she knew, there was no other way that ratification would be done. Brown noted that the reference to constitutional procedures was contained in the Russian "vision" paper of June 1 and more importantly was used in Article XVII of START and in numerous other agreements, including INF, CWC, and the Moscow Treaty. He asked whether it would be a problem if the U.S. Side requested its insertion: Kotkova responded that it would not.

¶5. (S) Turning to paragraph 2 of the Russian text, Brown noted that there was no reference to supersession and no provision permitting extension, even though both had been contained in the Russian "vision" paper. Kotkova explained that it was obvious that the treaty could be superseded if

the Parties so agreed and, therefore, such a provision was redundant, citing Article 59 of the Vienna Convention on the Law of Treaties. Brown noted that this was also a provision used in the START and Moscow Treaties. On extension, she said that the Parties could agree to an extension without having such a reference in the START Follow-on Treaty. Brown explained that the latter provision permitted an extension without going through the same constitutional procedures as would be required for its ratification. Kotkova responded that there would be no difference for Russia: there was still the need to obtain Duma approval, but she indicated that the formulation could be changed back to the START formulation.

¶6. (S) Brown noted that there was no reference to "integral parts" of the Treaty, as had been done in paragraph 1 of Article XVII of the START Treaty, and asked why this issue had not been addressed. Kotkova commented that she had included that idea in a separate article that had not yet been presented to the U.S. Side. In paragraph 4 of the Russian proposal, Brown observed that the START precedent, as well as those in other arms control treaties where "changes not deemed to be amendments" were permitted, was to specifically identify the objective of these changes, i.e., "to ensure the viability and effectiveness of the Treaty," commenting that this language was well-known by those in the U.S. Senate who followed this practice, and he cautioned against deleting this language because it might lead them to think that the practice was being changed. Kotkova said that she was not aware of this aspect of the language and did not see a reason to object to it if the U.S. side insisted, but she had deleted it because she did not see a reason for its retention.

¶7. (S) Brown commented that paragraph 5 of the Russian=proposed text had replaced the words "withdraw from" with "terminate" and asked for Kotkova's explanation of the change, noting that the right to "withdraw from" the treaty had been used in a number of arms control agreements in both bilateral and multilateral contexts. Kotkova, citing Section 3 of the Vienna Convention, entitled "Termination and Suspension of the Operation of Treaties," noted that the effect of "withdrawal from" a bilateral treaty was "termination," and, therefore, it made more sense to use that

term in that specific context, while "withdrawal from" made more sense for multilateral treaties. Kotkova added that this is the way she read Article 54 of the Vienna Convention ("Termination of or withdrawal from a treaty under its provisions or by consent of the parties") and that using such a clear formulation would make this more understandable to those in the Duma who might ask for clarification as to the legal effect of withdrawal. Brown again cautioned against changing a formulation that had numerous precedents in this same field, but noted that he would consult with colleagues who specialized in Vienna Convention interpretations.

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PREAMBLE  
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¶8. (S) Remarking that he had gone through the Russian-proposed preamble and had compared it with the Russian "vision" paper of June 1, 2009, the U.S. "Elements"

paper of May 19, 2009, and the START and Moscow Treaties' Preambles, Brown asked whether Kotkova could shed any light on the derivation of some of the formulations that he had not found in any of those documents. Kotkova admitted that she had not been directly involved in developing this part of the text but that she might be able to provide some background.

- On the formulation "committed to the historical goal of freeing humanity from the nuclear threat," Kotkova thought that this related to the formulation in the Russian vision paper on "the commitment of Russia and the U.S. to the goal of the total elimination of nuclear weapons," as well as the formulation in both the Russian vision paper and the U.S. Elements paper on "demonstrable movement towards the ultimate goal of the elimination of nuclear arms," although she was not certain and would try to provide a more definitive answer.

- She was not aware of the derivation of either the formulation "considering the stabilizing influence on the global situation brought about by the radical and verifiable reduction of nuclear arsenals at the turn of the twenty-first century" or the formulation "seeking to maintain continuity and provide new impetus to the process of reducing and limiting nuclear arms while maintaining the safety and security of their nuclear arsenals, and with a view to multilateralization of this process in the future," but would try to find out.

- On the formulation, "desiring to create a mechanism for verifying compliance with the obligations under this Treaty, based on the procedures that were perfected in the START Treaty and supplemented by transparency and confidence-building measures," she indicated that this had come from the Russian military and she was not aware that this had come from any other source.

- On the formulation that begins with "Considering it necessary to bring the nuclear policy of the Russian Federation and the United States of America into alignment with our countries' post-Cold War relationship," she noted that this was contained in both the Russian vision paper and the U.S. Elements paper, but she agreed with Brown that a better formulation for the preamble would be to replace the words "our" and "us" with "their" and "them," to conform to the practice of referring to the parties in the third person.

¶9. (S) Brown recalled the comments made by A/S Gottemoeller on the Russian-proposed text for a preambular provision, stating that Belarus, Kazakhstan and Ukraine had "completely fulfilled" their START obligations and asked for clarification. Kotkova explained that it was intentional that the Russian-proposed text focused on the obligations in the Lisbon Protocol rather than in the START Treaty itself, and then Brown and Kotkova went through the articles of that protocol, with Kotkova explaining that the three states had fulfilled their obligations in each instance, including most importantly acceding to the NPT as non-nuclear weapon states

Parties. Brown asked Kotkova how she would explain "full compliance" with Article I of that protocol, which states that the three states "shall assume the obligations" of the former Soviet Union. She responded by distinguishing between "assuming the obligations" in that context and "fulfilling the obligations of START," which she acknowledged had not yet

been done. Kotkova said that such a positive statement was chosen in part to defuse Ukrainian interest in participating in START Follow-on Treaty negotiations. Brown expressed his doubts that such a carefully crafted distinction would be politically supportable but he understood what the Russian Side was trying to do.

¶10. (S) Kotkova described how she had participated in a recent meeting between Antonov and his Ukrainian counterpart Nykonenko and that, during that meeting, she had argued that her analysis of the Ukrainian instrument of accession to the NPT demonstrated that Ukraine had already acknowledged that there was no linkage between START and Ukraine's status as a non-nuclear weapon state. She also had no idea what Ukraine was trying to achieve by seeking a positive security assurance from the P-5 in case Ukraine was threatened by a third state.

¶11. (S) On the text of a second preambular provision concerning Belarus, Kazakhstan and Ukraine ("Fully appreciating the contribution of...to the cause of general and complete nuclear disarmament and strengthening international peace and security as non-nuclear weapon states"), Kotkova explained that she thought these words had come directly from Kazakhstani Foreign Minister Tazhin and were also being proposed as an additional way to re-direct the interest of those states in participating in START Follow-on Treaty negotiations.

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ADDITIONAL LAWYERS  
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¶12. (S) Brown asked whether Kotkova would be getting reinforcements from Moscow in terms of additional lawyers, noting that he had at least one lawyer identified from the State Department to participate in the negotiations. She responded that perhaps a lawyer from the President's Office would be coming but she was not certain.

¶13. (U) Documents exchanged. None.

¶14. (U) Gottemoeller sends.  
GRIFFITHS